

STATE BAR COURT OF CALIFORNIA
HEARING DEPARTMENT – LOS ANGELES

In the Matter of) Case Nos.: **10-N-10075-PEM**
) 11-O-12207 (Cons.)
RICHARD DAVID COMESS,)
) **DECISION AND ORDER OF**
Member No. 198665,) **INVOLUNTARY INACTIVE**
) **ENROLLMENT**
A Member of the State Bar.)

Respondent Richard David Comess (respondent) was charged with (1) failing to comply with California Rules of Court, rule 9.20(c); and (2) failing to comply with all conditions attached to a disciplinary probation. He did not file a response to the notice of disciplinary charges (NDC), and his default was entered. The Office of the Chief Trial Counsel (State Bar) filed a petition for disbarment under rule 5.85 of the Rules of Procedure of the State Bar.¹

Rule 5.85 provides the procedure to follow when an attorney fails to participate in a disciplinary proceeding after receiving adequate notice and opportunity. The rule provides that if an attorney's default is entered for failing to respond to the NDC, and the attorney fails to have the default set aside or vacated within 180 days, the State Bar will file a petition requesting the court to recommend the attorney's disbarment.²

¹ Unless otherwise indicated, all references to rules are to this source.

² If the court determines that any due process requirements are not satisfied, including adequate notice to the attorney, it must deny the petition for disbarment and take other appropriate action to ensure that the matter is promptly resolved. (Rule 5.85(E)(2).)

In the instant case, the court concludes that the requirements of rule 5.85 have been satisfied, and therefore, grants the petition and recommends that respondent be disbarred from the practice of law.

FINDINGS AND CONCLUSIONS

Respondent was admitted to practice law in this state on December 9, 1998, and has been a member since then.

Procedural Requirements Have Been Satisfied

On May 19, 2011, the State Bar filed and properly served the NDC on respondent by certified mail, return receipt requested, at his membership records address. The NDC notified respondent that his failure to participate in the proceeding would result in a disbarment recommendation. (Rule 5.41.)

Respondent had actual notice of these proceedings as he participated in status conferences held on June 27, 2011 and July 11, 2011.

Respondent thereafter failed to file a response to the NDC. On August 5, 2011, the State Bar filed and properly served a motion for entry of respondent's default. The motion complied with all the requirements for a default, including a supporting declaration of reasonable diligence by the State Bar deputy trial counsel declaring the additional steps taken to provide notice to respondent. (Rule 5.80.) The motion also notified respondent that if he did not timely move to set aside his default, the court would recommend his disbarment. Respondent did not file a response to the motion, and his default was entered on August 23, 2011. The order entering the default was served on respondent at his membership records address by certified mail, return receipt requested. The court also ordered respondent's involuntary inactive enrollment as a member of the State Bar under Business and Professions Code section 6007, subdivision (e), effective three days after service of the order, and he has remained inactively enrolled since that

time. The return receipt was returned to the court bearing what appears to be respondent's signature.

Respondent did not seek to have his default set aside or vacated. (Rule 5.83(C)(1) [attorney has 180 days to file motion to set aside default].) On March 12, 2012, the State Bar filed the petition for disbarment. As required by rule 5.85(A), the State Bar reported in the petition that: (1) the State Bar has not had contact with respondent since the default was entered; (2) there are no other disciplinary investigation matters pending against respondent; (3) respondent has a prior record of discipline; and (4) the Client Security Fund (CSF) has made payments resulting from respondent's conduct. Respondent did not respond to the petition for disbarment or move to set aside or vacate the default. The case was submitted for decision on April 19, 2012.

Respondent has been disciplined on three prior occasions. Pursuant to a Supreme Court order filed on November 18, 2003, respondent, in a default proceeding, was suspended for two years, the execution of which was stayed, and he was actually suspended for 90 days and until the State Bar Court granted a motion to terminate his actual suspension. The misconduct involved one client matter. Respondent failed to perform, failed to inform his client of significant developments, improperly withdrew from representation, failed to promptly return the client's file, failed to obey a court order, and committed an act of moral turpitude by practicing law while he was not entitled.

Pursuant to a Supreme Court order filed on January 12, 2004, respondent, in a default proceeding, was suspended for three years, the execution of which was stayed, and he was actually suspended for six months and until he made restitution and the State Bar Court granted a motion to terminate his actual suspension. The misconduct involved two client matters. Respondent failed to perform with competence, failed to respond to client inquiries, failed to

inform clients of significant developments, failed to refund unearned fees, improperly withdrew from representation, failed to return client documents, and failed cooperate in a disciplinary investigation.

Pursuant to a Supreme Court order filed on May 14, 2010, respondent was suspended for one year, the execution of which was stayed, and he was placed on probation for three years subject to conditions including his suspension from the practice of law for a minimum of 60 days and until he made restitution. The misconduct involved two matters. Respondent practiced law while he was not entitled, committed an act of moral turpitude by misrepresenting his eligibility to practice law, failed to refund unearned fees, and failed to timely comply with former California Rules of Court, rule 955. Respondent and the State Bar entered into a stipulation as to facts and conclusions of law in this matter.

The Admitted Factual Allegations Warrant the Imposition of Discipline

Upon entry of respondent's default, the factual allegations in the NDC are deemed admitted and no further proof is required to establish the truth of such facts. (Rule 5.82.) As set forth below in greater detail, the factual allegations in the NDC support the conclusion that respondent is culpable as charged and, therefore, violated a statute, rule or court order that would warrant the imposition of discipline. (Rule 5.85, subd. (E)(1)(d).)

1. Case Number 10-N-10075 (Rule 9.20 Matter)

Count One – respondent violated California Rules of Court, rule 9.20(c) (duties of disbarred, resigned or suspended attorneys) by failing to file proof of compliance as required by rule 9.20(c) as ordered by the Supreme Court in its May 14, 2010 Order.

2. Case Number 11-O-12207 (Probation Matter)

Count Two – respondent violated Business and Professions Code section 6068, subdivision (k) (duty to comply with probation conditions), by failing to comply with the

specified conditions attached to the disciplinary probation ordered by the Supreme Court in its Order filed on May 14, 2010.

Disbarment is Mandated under the Rules of Procedure

Based on the above, the court concludes that the requirements of rule 5.85(E) have been satisfied, and respondent's disbarment must be recommended. In particular:

(1) the NDC was properly served on respondent under rule 5.25;

(2) respondent had actual notice of the proceedings prior to the entry of his default, as he participated in two status conferences;

(3) the default was properly entered under rule 5.80; and

(4) the factual allegations in the NDC deemed admitted by the entry of the default support a finding that respondent violated a statute, rule or court order that would warrant the imposition of discipline.

Despite actual notice and opportunity, respondent failed to participate in this disciplinary proceeding. As set forth in the Rules of Procedure of the State Bar, the court must recommend his disbarment.

RECOMMENDATION

Disbarment

The court recommends that respondent Richard David Comess be disbarred from the practice of law in the State of California and that his name be stricken from the roll of attorneys.

Rule 9.20

The court also recommends that respondent be ordered to comply with the requirements of California Rules of Court, rule 9.20, and to perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of the Supreme Court order in this proceeding.

Costs

The court further recommends that costs be awarded to the State Bar in accordance with Business and Professions Code section 6086.10, such costs being enforceable both as provided in Business and Professions Code section 6140.7 and as a money judgment.

ORDER OF INVOLUNTARY INACTIVE ENROLLMENT

In accordance with Business and Professions Code section 6007, subdivision (c)(4), the court orders that Richard David Comess, State Bar number 198665, be involuntarily enrolled as an inactive member of the State Bar of California, effective three calendar days after the service of this decision and order. (Rules Proc. of State Bar, rule 5.111(D).)

Dated: June _____, 2012

Pat McElroy
Judge of the State Bar Court